IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.03.2021

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Cont.P.Nos.2495 of 2018 and 309 of 2019

1.T.R.Sankaran
2.P.Rajaram
3.K.Sundaraman
4.S.P.Dhanaraj
5.D.Sundaresan
6.Chandra Guruvayurappan
7.R.Rajendra Babu
8.V.Muthukrishnan .. Petitioners in Cont.P.No.2495 of 2018

1.K.R.Narasimhan
2.K.Padhmanabhan .. Petitioners in Cont.P.No.309 of 2019

Versus

1.Sri.P.S.Jayakumar
Managing Director and CEO.
Bank of Baroda, Central Office,
PB 100463 Walchan Hirachand Marg,
Ballard Pler, Mumbai 38.
presently at Baroda Corporate Centre,
C-26, G Block, Bandra Kurla Complex,
Bandra East, Mumbai 400 051.

2.Sri.Kamalesh R.Patel,
Competent Authority,
for Pension Regulations,
Bank of Baroda,
Bank of Baroda, Suraj Plaza III,
Sayajigunj, Baroda 390 005
presently at Baroda Bhavan, R.S.No.576,
R.C.Dutta Road, Alkapuri,
Baroda 390 007.

3.Sri.Rajiv Kumar,
Secretary,
Union of India,
Banking Division,
Ministry of Finance,
Jeevan Deep Building,
Parliament Street,
New Delhi 110 001. .. Respondent in Cont.P.No.2495 of 2018

Mr.C.Malalon
Deputy General Manager(HRM)
Competent Authority
for Pension Regulation
Bank of Baroda,
Suraj Plaza III,
Sayajgunj, Baroda 390 095. .. Respondent in Cont.P.No.309 of 2019

Prayer:- Contempt petition filed under section 11 of the Contempt of Court Act, 1971, to punish the respondent for wilfully disobeying the order dated 16.04.2018 passed in W.P.NO.970 of 2002 and pass such further or other orders as this Court may deem fit and proper in the circumstances of the case.

For Petitioners in Cont.P.No.2495/2018: Mr.S.Vijayakumar
For Petitioners in Cont.P.No.309/2019 : Mr.Kalyanaraman
For Respondent in both petitions : Mr.M.Anand
for M/s.T.S.Gopalan & co.

COMMON ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

By consent, both the Contempt Petitions are taken up and disposed of by this common order, as the order which is the subject matters of contempts is one and the same.

2. Mr.G.Palani and 16 others, had filed W.A.No.1209 of 2007, against M/s.Bank of Baroda and two others, challenging the order dismissing the Writ Petition in toto, without considering the prayer for Writ of Mandamus, directing the second respondent to pay the difference in basic pension and additional pension and commutation of pension with interest at the rate to be determined by this Court in terms of the Bank of Baroda (Employees') Pension Regulations, 1995.

3. The Writ Appeal, after contest came to be allowed by setting aside the order passed in the Writ Petition, directing the respondents 1 and 2 to calculate and pay the differences of monetary benefits to the appellants within twelve weeks from the date of receipt of a copy of the judgment and however, the Division Bench has rejected the prayer as to the payment of difference in basic pension and additional pension and commutation of pension with interest at the rate to be determined by this Court.

4. M/s.Bank of Baroda and another, aggrieved by the said order, had also filed C.A.Nos.5525/2012 and the said Special Leave Petitions were entertained and converted as C.A.Nos.6254/2012, 5611/2012, 3026-3253/2013, 3257-3262/2013, 11205-11340/2014, 11342-11435/2014, 9533-9649/2014, 8357/2014, 4711-4800/2014 and C.A.Nos.1880/2018, 1881-1888/2018, 1890/2018, 1892-1912/2018, 1918/2018, 1919-2087/2018 and 2088-2092/2018. The Hon'ble Supreme Court of India, vide common judgment dated 13.02.2018, has set aside the judgment rendered by the High Court of Delhi and affirmed the order of High Courts of Karnataka at Bangalore and the High Court of Madras and the Hon'ble Supreme Court also dismissed the appeals filed by the Banks and allowed the appeals filed by the Association and also issued directions to pay the amount due and payable, with interest at the rate of 9%, to be calculated and paid within a period of four months from that day.

5. Mr.T.R.Sankaran and 24 others, had filed W.P.No.970 of 2002, Tmt.A.B.Kasthurirangan and 37 others, had filed W.P.No.5916 of 2002 and Mr.S.Krishnamurthy and Mr.V.R.Balasubramaniam had filed W.P.No.19830 of 2002, against Bank of Baroda as well as Canara Bank, respectively, praying for issuance of writ of Declaration declaring sub-clause (c) of Clause (s) of Regulations 2 of Canara Bank (Employees) Pension Regulation, 1995 and Indian Overseas Bank (Employees) Pension Regulations, 1995, as null and void,

with consequential direction, directing the 1st respondent to pay them the difference in basic pension and additional pension from the date of their retirement and commutation of pension with interest at a rate to be determined by this Court, in terms of the various regulations pointed out supra.

6. The Hon'ble First Bench of this Court vide common order dated 16.04.2018, had disposed of the writ petitions, holding that the issue raised in the writ petitions are covered by the judgment of the Hon'ble Supreme Court in ***Civil Appeal No.5525 of 2012, dated 13.02.2018 (Bank of Baroda and another Vs.G.Palani and others) etc., batch,*** with consequential directions.

7. The petitioners, who are the employees of the respective Banks, came forward to file these Contempt Petitions, alleging wilful disobedience and non compliance of the order.

8. Mr.Kalyanaraman and Mr.S.Vijayakumar, the respective learned counsel appearing for the petitioners has drawn the attention of this Court to the common order dated 28.08.2019 made in Cont.P.(C).Nos.209-311/2019 in C.A.Nos.1919/2018, 1920-1946/2018, 1947-1954/2018, 1965-1994/2018, 2005-2016/2018, 2043-2057-2018, 2060-2063/2018 @ C.A.Nos.1919-2087/2018 and C.A.Nos.3257-3262/2013 and would submit that in the light of the observation / finding given in paragraph no.6 of the said order, the alleged compliance affidavit filed by the respondent / Contemnor / Banks, *per se* amounts to

contumptuous act and it would also exhibit deliberate and wilful disobedience of the above cited common order.

9. Attention of this Court has also been brought to the affidavits of compliance filed by the respondents / contemnors as well as the additional affidavits filed in response to the same.

10. This Court has carefully considered the rival submissions and also perused the materials placed before it.

11. A perusal and consideration of the affidavit filed in support of this petition for Contempts, affidavit of compliance, reply / additional reply fled to the affidavit of compliance would disclose that the alleged contemptuous act pertains to part non compliance of the orders, which are the subject matter of contempt in these Contempt Petitions and challenge is made mainly with regard to the calculation done.

12. In the considered opinion of this Court, this Court, in exercise of it's contempt jurisdiction, cannot go into the minute details of the calculation done, for the reason that in the affidavit of compliance and reply to the affidavit of compliance, the petitioners had disputed the calculation memos given in the said affidavits.

13. This Court cannot order the payment of arrears with precise mathematical calculation. It is also pointed out by the respective learned

counsel appearing for the petitioners that the petitioners are aged about more than 70 years and odd and at this juncture, it has been pointed out that they cannot be dragged to workout the remedies, as to the arrears to be paid / excess amount sought to be recovered, in the form of further round of litigations and therefore, prays for appropriate orders by directing the respondents / contemnors to pay the arrears with further direction not to recover the alleged excess amount paid with interest at the rate of 9% per annum.

14. This Court has also taken into consideration the said submission.

15. The Hon'ble Supreme Court of India in the decision reported in ***2014 (14) Scale 300 (State of Punjab and others Vs. Rafiq Masih (white washer)*** has considered the issue with regard to the recovery of excess amount paid and in paragraph no.12 summarizes the situations, wherein recoveries by the employers, would be impermissible in law:

> *"(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).*
>
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recover.*
>
> *(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
>
> *(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher duties of a higher post,*

and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

The said judgment has been considered in a subsequent judgment rendered by the Hon'ble Supreme Court ***in 2016 (7) Scale 471 (High Court of Punjab and Haryana and Others Vs. Jagdev Singh).*** The Hon'ble Supreme Court of India in the said decision sought to distinguish the future situations which had been taken note of by it in it's earlier decision reported in ***2014 (14) Scale 300*** and observed as follows in paragraph no.11 of the same:

"11.The Principle enunciated in proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking."

16. The submission made by the respective learned counsel appearing for the parties revolve around calculation of arrears and recovery of the excess

amount paid. As pointed out by this Court in the earlier paragraphs, exact calculation of the arrears to be paid or amount sought to be recovered, in the considered opinion of this Court, cannot be gone into by this Court in contempt jurisdiction. If the petitioners are aggrieved by the same, they are at liberty to workout their remedies in accordance with law before the competent Forum, who may also take into consideration the above cited decisions rendered by the Hon'ble Supreme Court of India.

17. In the result, these Contempt Petitions are closed and the petitioners are granted liberty to workout their further remedies in accordance with law before the competent Forum/s. No costs.

SD/-

ASSISTANT REGISTRAR(COMM.CASES)

sk

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

from 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

GS/15/04/2021

To

1.The Managing Director and CEO.
Bank of Baroda, Central Office,
PB 100463 Walchan Hirachand Marg,
Ballard Pler, Mumbai 38.
presently at Baroda Corporate Centre,
C-26, G Block, Bandra Kurla Complex,
Bandra East, Mumbai 400 051.

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3.The Secretary,
Union of India,
Banking Division,
Ministry of Finance,
Jeevan Deep Building,
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New Delhi 110 001.

4. The Deputy General Manager(HRM)
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